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NOTICE OF ALLOWANCE AND FEE(S) DUE

20988

7590

09/23/2009

OGILVY RENAULT LLP
1, Place Ville Marie
SUITE 2500
MONTREAL, QC H3B 1R1
CANADA

EXAMINER

COSIMANO, EDWARD R

ART UNIT

PAPER NUMBER

2863

DATE MAILED: 09/23/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,563	06/26/2007	Benoit Chouinard	15228-39US	1647

TITLE OF INVENTION: METHOD FOR PERMANENT CALIBRATION BASED ON ACTUAL MEASUREMENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	12/23/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
 or Fax **(571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

20988 7590 09/23/2009

Ogilvy Renault LLP
 1, Place Ville Marie
 SUITE 2500
 MONTREAL, QC H3B 1R1
 CANADA

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nonprovisional	NO	\$1510	\$300	\$0	\$1810	12/23/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
COSIMANO, EDWARD R	2863	702-085000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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EXAMINER

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 219 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 219 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability

Application No.

10/593,563

Examiner

Edward R. Cosimano

Applicant(s)

CHOUINARD ET AL.

Art Unit

2863

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 28 May 2009.
2. ☒ The allowed claim(s) is/are 1-28.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Art Unit: 2863

1. EXAMINER'S COMMENT

1.1 When preparing this Office action the examiner considers the instant application to include:

A) the Oath/Declaration filed on 26 June 2007 which is acceptable to the examiner;

B) the Abstract filed on 20 September 2006 which is acceptable to the examiner;

C) figures 1, 2, 3, 4, 5a, 5b & 6 of the set of drawings containing 3 sheets of 7 figures comprising figures 1, 2, 5a, 5b & 6 as presented in the set of drawings filed on 20 September 2006 and figures 3 & 4 as presented in the set of drawings filed on 28 May 2009 where the content of figures 1, 2, 3, 4, 5a, 5b & 6 of the above set of drawings are acceptable to the examiner;

D) the written description as filed on 20 September 2006 and amended on 28 May 2009; and

E) the amended set of claims as filed on 20 September 2006.

1.2 Applicant's claim for the benefit of an earlier filing date pursuant to 35 U.S.C. 119(e), 35 U.S.C. 120, 35 U.S.C. 365(c) and 35 U.S.C. 371 are acknowledged.

1.3 The examiner has considered the prior art cited in the base applications.

1.4 The examiner has approved the proposed changes to figure 3 of the drawings as filed on 28 May 2009.

2. REASONS FOR ALLOWANCE

2.1 The following is a statement of reasons for the indication of allowable subject matter:

A) the prior art, for example:

(1) either Houvig (4,303,984) or Hata (4,418,392) or Thong (4,672,306) or Eckardt et al (4,845,649) or Respaut (4,868,476) or McEachern et al (5,089,979) or McBean, Sr (5,347,476 or 5,365,462) or Merrick et al (5,357,953) or McBean (5,375,073 or 5,377,128) or Chader et al (5,617,857) or Morys (5,790,432 or 5,946,641) or French (5,839,094) or Messner et al (5,987,960) or Lalla (6,427,129) or Araya et al (2007/0187240) disclose a machine/process that provides the useful and beneficial function of providing correction or compensation or calibration data/information for an interchangeable

machine/process. To provide the correction or compensation or calibration data/information for an interchangeable machine/process, a suitable type of label or tag or memory device with the correct correction or compensation or calibration data/information for the interchangeable machine/process is physically attached or associated with the interchangeable machine/process. Next when the interchangeable machine/process is connected to a machine/process that uses the interchangeable machine/process in order in order to provide the intended function of the interchangeable machine/process, the output data/information provided by the interchangeable machine/process may then be corrected or compensated or calibrated by the attached machine/process, by permitting the attached machine/process to suitably access the correction or compensation or calibration data/information for the interchangeable machine/process that is stored in or on the label or tag or memory device attached to the interchangeable machine/process and then using the stored correction or compensation or calibration data/information for the interchangeable machine/process in order to correct or compensate or calibrate the output data/information from the interchangeable machine/process.

(2) either Barlow et al (4,382,215) or Matsuki et al (JP 62-130160A) or Abbe (6,640,607) disclose a machine/process that provides the useful and beneficial function of calibrating a co-ordinate measuring machine/process in which a series of measurements of a probe relative to a known reference mark are used in order to determine the correct correction or calibration or compensation values for the co-ordinate measuring machine/process when using a probe. The determined calibration data/information values for the co-ordinate measuring machine/process are then stored in a suitable memory medium and used in order to correct or calibrate or compensate that measurement data/information produce by the co-ordinate measuring machine/process while the co-ordinate measuring machine/process is using the probe.

(3) Forrer et al (6,347,460) disclose a machine/process that provides the useful and beneficial function of verifying the precision of instruments by periodically testing the instrument against a standard for the instrument.

(4) Lapstun et al (2007/0108285) discloses a machine/process that provides the useful and beneficial function of placing coded data/information about an item/object in or on the item/object.

B) however, the prior art does not fairly teach or suggest in regard to claim 1 a process in claim 1 that provides the useful and beneficial function of fabricating or manufacturing a device useable with a Computer Aided Surgery (CAS) system by providing actions in claim 1 that perform at least the functions of:

(1) fabricating an object or item or device with a tracker that has a known configuration in accordance with the specifications of the object or item or device being fabricated;

(2) obtaining the true actual parameters of the object or item or device that has been fabricated by measuring (a) the object or item or device that has been fabricated, and (b) the relative location of the tracker with respect to the object or item or device that has been fabricated; and

(3) storing the measured true parameters of the object or item or device that has been fabricated in a suitable type of storage medium that is associated with the object or item or device that has been fabricated.

Claims 2-8, which depend from claim 1, are allowable for the same reason.

C) however, the prior art does not fairly teach or suggest in regard to claim 9 a machine in claim 9 that provides the useful and beneficial function of calibrating a machine/process, for example a Computer Aided Surgery (CAS) system, to use an interchangeable fabricated or manufactured device or item or object that has been fabricated or manufacture to be used with the machine/process or CAS system by providing structures in claim 9 that perform at least the functions of:

(1) obtaining the true actual parameters of the object or item or device that has been fabricated by measuring (a) the object or item or device that has been

fabricated, and (b) the relative location of a tracker of known configuration with respect to the object or item or device that has been fabricated;

(2) storing the measured true parameters of the object or item or device that has been fabricated in a suitable type of storage medium that is associated with the object or item or device that has been fabricated;

(3) entering the stored measured true parameters of the object or item or device that has been fabricated into a machine/process, such as a CAS system, that is to use the fabricated object or item or device to perform some function; and

(4) using the entered stored measured true parameters of the object or item or device that has been fabricated in combination with a recognize position of the tracker in order to create or generated a 3 Dimensional (3D) model of the object or item or device that has been fabricated with in a 3D environment.

Claims 10-20, which depend from claim 9, are allowable for the same reason.

D) however, the prior art does not fairly teach or suggest in regard to claim 21 a machine in claim 21 that provides the useful and beneficial function of fabricating or manufacturing an interchangeable manufactured device or item or object that has been fabricated or manufacture to be used with the machine/process, such as a Computer Aided Surgery (CAS) system by providing structures in claim 21 that perform at least the functions of:

(1) mounting a tracker of known configuration to an object or item or device that has been fabricated; and

(2) storing in a suitable storage medium associate with the object or item or device that has been fabricated the measured true parameters of the object or item or device that has been fabricated along with the relative location of a tracker of known configuration with respect to the object or item or device that has been fabricated.

Claims 22-28, which depend from claim 21, are allowable for the same reason.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0571.

Art Unit: 2863

The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern Time).

3.1 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn, can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

3.2 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC

09/18/2009

**/Edward Cosimano/
Primary Examiner Unit 2863**